IN THE COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

No. 39265-8-II

CHRISTA ALBICE, a married woman, and BART A. TECCA and KAREN L. TECCA, husband and wife,

Appellants,

VS.

PREMIER MORTGAGE SERVICES OF WASHINGTON, INC. a
Washington Corporation; OPTION ONE MORTGAGE CORPORATION
a California Corporation; RON DICKINSON and "JANE DOE"
DICKINSON, husband and wife,

Respondents,

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

BRIEF OF APPELLANTS

DOUGLAS N. KIGER, WSBA#26211 Attorney for Christa Albice, Bart A. Tecca and Karen L. Tecca, Appellants

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

- 1. The trial court erred in ruling that the Dickinsons were bona fide purchasers for value. CP 17-20; 24; 42-44; 45-47; 48-53 (Findings of Fact 1.2.3, 1.2.4, 1.2.8, 1.2.9; Conclusions of Law 2.5, 2.8, 2.9, 2.10, 2.11); 145; 183-186.
- 2. The trial court erred in concluding the trustee could continue and conduct a non-judicial deed of trust foreclosure to a date that was more than 120 days after the date originally set for sale. CP 17-20; 24; 48-53 (Finding of Fact 1.1.10, 1.2.3, 1.2.4, 1.2.8, 1.2.9; Conclusions of Law 2.5, 2.8, 2.9, 2.10, 2.11); 145; 183-186.
- 3. The trial court erred in upholding the sale to Mr. Dickinson where Ms. Albice and the Teccas tendered an amount sufficient to cure the defaults more than eleven days prior to the foreclosure sale. RP 11:20.5 25.5; CP 145 (paragraphs 4 and 5)
- 4. The trial court erred by reconsidering and vacating its order of summary judgment entered June 2, 2008. CP 100-102; 108-110.
- 5. The trial court erred in ruling that Premier Mortgage Services of Washington employed an officer who was a resident of the state of Washington at the time the foreclosure sale in this matter took place. CP 27-29; 35-40; 42-44; 45-47; 48-53 (Findings of Fact 1.1.10,

1.2.3, 1.2.4, 1.2.8, 1.2.9; Conclusions of Law 2.1, 2.2, 2.3, 2.4, 2.5, 2.8, 2.9, 2.10, 2.11); 108-110.

6. The trial court erred in entering judgment in favor of the Dickinsons for rent, statutory costs, and statutory attorney fees. CP 45-47; CP 48-53 (Findings of Fact 1.2.3, 1.2.4, 1.2.8, 1.2.9; Conclusions of Law 2.8, 2.9, 2.10, 2.11).

B. Issues Pertaining to Assignments of Error

- 1. Did the trial court commit reversible error in determining that the Dickinsons were bona fide purchasers for value where the trustee's deed contained only conclusory statements about compliance with the foreclosure statutes that were false on their face, where the Dickinsons knew or should have known the sale did not comply with the foreclosure statutes, and where the Dickinsons purchased the property for only 13% of the fair market value of the property? (Assignment of Error 1).
- 2. Did the trial court commit reversible error by concluding a trustee can lawfully conduct a non-judicial deed of trust foreclosure more than 120 days after the date originally set for sale? (Assignment of Error 2).
- 3. Was it reversible error for the trial court to uphold the non-judicial deed of trust foreclosure sale in this case where Ms. Albice and

the Teccas tendered an amount sufficient to cure all defaults more than 11 days prior to the foreclosure sale? (Assignment of Error 3).

- 4. Was it reversible error for the trial court to determine Premier had an officer residing in the state of Washington at the time of the foreclosure sale in this case where no admissible evidence was presented in support of such conclusion at the summary judgment motion in this case, or at trial, and where the only evidence at trial relating to the relevant time-frame showed Premier did not have an officer residing in Washington? (Assignments of Error 4 and 5).
- 5. Was it reversible error for the trial court to enter a judgment against Ms. Albice and the Teccas for rent, costs, and statutory attorney fees where the non-judicial deed of trust foreclosure was not conducted according to statute? (Assignment of Error 6).

II. STATEMENT OF THE CASE

A. Factual Background

This case involves an action to set aside a non-judicial deed of trust foreclosure. CP 637-684. The property foreclosed upon was owned by Christa Albice, Karen Tecca, and Bart Tecca. CP 387, 390-391, 453, 843, 891; RP 13. Ron Dickinson, through an agent, was the successful bidder at the foreclosure sale. CP 360, 369-372.

Sisters Christa Albice and Karen Tecca inherited the property, consisting of about ten acres of no-bank saltwater frontage property on Harstine Island near Shelton, from their parents. CP 387, 390-391, 453, 843, 891; RP 13. The property was free of any liens or encumbrances at the time it was inherited. CP 453, 843, 891. In 2003, Ms. Tecca and her husband borrowed \$115,500.00 against the property to pay for their child's college education. *Id.* Ms. Albice signed the deed of trust securing the loan, but did not sign the note, and had no personal obligation to repay the debt. Id.; CP 305-307, 431-442; RP 17. The loan was obtained through a subsidiary of H&R Block known as Option One Mortgage Corporation (hereinafter "Option One")¹. CP 305-307, 431-442, 710. The trustee of the deed of trust, Premier Mortgage Services of Washington, Inc. (hereinafter "Premier"), is a wholly owned subsidiary of Option One. CP 240-241, 697-711; See also CP 49 (Finding of Fact 1.1.3). Between the second half of 2006 and the end of 2007, the property had a fair market value of \$950,000.00. CP 386-410.

The Teccas fell delinquent in their loan payments to Option One in April of 2006. CP 454². In approximately June of 2006, after a Notice of

¹ Apparently Option One assigned its beneficial interest in the loan to Wells Fargo Bank (Ex. 19), although, as described herein, Option One continued to hold itself out to the Teccas as the lender. CP 460.

² Ms. Tecca's declaration is also found at CP 843-866 and 891-920. Citation to those portions of the record are omitted for sake of brevity.

Trustee's Sale was issued, Ms. Tecca contacted Option One to cure her delinquent payments. CP 454; RP 14-15; Appendix B. The Notice of Foreclosure and Notice of Trustee's Sale stated that the foreclosure sale would take place on September 8, 2006. CP 303, 444; Appendix B and C. According to the Notice of Trustee's Sale, after applying credits and offsets, the Teccas were delinquent in the amount of \$1,228.03 as of June 2, 2006. CP 277, 444, 460; Appendix B. On July 19, 2006 (about a month and a half later), the Teccas entered into a Forbearance Agreement with Option One to cure their delinquency. CP 454, 465-472; RP 14. According to the Forbearance Agreement, the Teccas owed \$5,126.97 at that point in time. CP 471. This number did not include offsets for unapplied funds held by Option One for the benefit of the Teccas. CP 268-270, 298-299. Further, the \$5,126.97 figure included an estimate of \$1,733.79 for foreclosure fees and costs. CP 471. The actual foreclosure costs and fees were only \$872.94. CP 298.

According to the terms of the Forbearance Agreement, the Teccas were required to make a down payment of \$3,000.00 upon executing the agreement, and five monthly payments of \$1,220.14. CP 454, 465-472. These monthly payments represented the amount in arrears, plus current monthly payments. *Id.* The Teccas paid the down payment of \$3,000.00 and five subsequent monthly payments of \$1,220.14. CP 314-315, 454;

See also Ex. 24 through 30 (none of which were admitted at trial). The final payment was tendered by the Teccas on February 2, 2007. CP 454, 474. On February 10, 2007, Ms. Tecca was notified by Western Union that the final payment had been declined by Option One. CP 454, 474; RP 15; Ex. 26 (not admitted). Ms. Tecca contacted Option One at that time and asked what amount must be tendered to bring the loan current. RP 16; CP 454; Ex. 27 (not admitted). She received no response. RP 16; CP 454. According to the terms of the Forbearance Agreement, the Teccas,

shall be considered in material breach of this Agreement and this Agreement shall automatically terminate, upon ten (10) days prior written notice... under any of the following circumstances:... fail[ure] to strictly comply with any of the terms of this Agreement....

CP 468. On February 16, 2007, Option One, through Western Union, refunded the Teccas' final payment under the Forbearance Agreement without any explanation or notice that the Forbearance Agreement had been terminated. CP 259, 454, 475; RP 15.

Ms. Albice and the Teccas later learned that Premier conducted a foreclosure sale of the property on Feburary 16, 2007, 161 days after the date stated in the Notice of Foreclosure and Notice of Trustee's Sale. CP 303, 444, 455, 783-829, 772. No notices were provided to Ms. Albice or the Teccas of the new sale date, or of any continuances of the original sale date. CP 260-261, 352-359, 368, 380-383, 772. In addition to the

\$1,220.14 that was refunded on the day of foreclosure, Option One was also holding \$5,339.78 in unapplied funds paid by the Teccas under the Forbearance Agreement. CP 268-270, 298-299; Appendix F. This \$5,339.78 consisted of \$807.59 held in an escrow/impound account, \$3,623.17 in payments held as a credit toward foreclosure fees and costs, and \$909.02 held in a "suspense" account. CP 268-270, 298-299; Appendix F.

The foreclosure sale was conducted by Premier. CP 240-241, 247, 697-711. Premier was a wholly owned subsidiary of Option One. CP 240-241, 697-711. All "employees" of Premier were actually employed by Option One. CP 240-241, 262; RP 33. According to its 2006 and 2007 annual reports filed with Washington's Secretary of State, none of Premier's corporate officers were residents of the state of Washington for that period of time. CP 170-173, 321-324; Exs. 34, 35; Appendix D and E. At a CR 30(b)(6) deposition in the case, Premier designated an employee of Option One, Lisa Clary, to answer questions about the foreclosure in this case and the relationship between Option One and Premier. CP 240-242. Ms. Clary testified that she did not know who the corporate officers of Premier were, and did not know if any of them were residents of the state of Washington at the time of the foreclosure. CP

243-244. She also testified that although Premier was the trustee of the deed of trust in this case, she did not know what a trustee did. CP 247.

Shortly before trial, Teresa Harding, who had not been employed with Option One since 2007, emerged as the purported officer of Premier residing in Washington at the time of the foreclosure. CP 103-107, 130-134; RP 37. Like Ms. Clary, Ms. Harding received her paychecks from Option One or H&R Block. RP 33. The companies were "intertwined." *Id.* As Vice President of Premier, Ms. Harding testified, "I do not participate in foreclosures." RP 34. Ms. Harding had no job or duty description for her position as Vice President of Premier. RP 35-36. When asked if she had authority to govern the day-to-day operations of Premier, Ms. Harding testified that, as far as she knew, the company did not have day-to-day operations. RP 36. Ms. Harding testified that she was appointed or elected the resident officer of Premier in May 2004, although she was not a Washington resident until October 2004. *Id.*

At trial the Dickinsons submitted a Consent by Directors dated May 2, 2005, showing Ms. Harding was retroactively appointed Vice President of the company from July 1, 2004, to May 2, 2005. Ex. 1; CP 106, 133. The Dickinsons also submitted a Consent by Directors dated May 31, 2005, showing Ms. Harding was appointed Vice President on that date, "to hold such office at the pleasure of this Board of Directors." Ex.

2; CP 107. At trial Ms. Harding testified that she did not know if she was ever re-elected or re-appointed to the position. RP 37. She simply assumed that she was an officer of the company through the termination of her employment in 2007. RP 37. No one ever told her one way or the other. *Id.* According to Premier's 2006 Annual Report, Ms. Harding was not elected or appointed as Vice President of the company in that year. Ex. 34; CP 170-171; 321-322; RP 37; Appendix D. Neither was she elected or appointed as Vice President of Premier in 2007. Ex. 35; CP 172-173, 323-324; Appendix E.

Mr. Dickinson learned about the foreclosure either through a newspaper or from being present at the courthouse on the date first set for sale (September 8, 2006). CP 303, 419, 444, 526. Mr. Dickinson is in the business of buying properties at foreclosure sales. CP 349-350, 369-370, 413-419, 424. He is familiar with foreclosure laws in the state of Washington. CP 428. In early 2007, Mr. Dickinson owned about thirteen properties in Thurston and Mason counties that he had purchased at foreclosure. *Id.*

The foreclosure sale was originally set for September 8, 2006. CP 303, 444. About four or five bidders showed up on that date to bid at the sale. CP 423. But the sale was continued. CP 356, 422. Ultimately the sale was continued approximately six times, for a total of 161 days. CP

352-359. There were no postings that the sale was continued. CP 368. When he learned about the foreclosure, Mr. Dickinson researched the property and obtained a copy of the Notice of Trustee's Sale. CP 526; Appendix B. He also contacted Premier to gather additional information about the sale. CP 425. On December 17, 2006, Mr. Dickinson visited Ms. Tecca at her home and offered to purchase the property from her. CP 421, 428-429, 528. Ms. Tecca told Mr. Dickinson that she would never let the property go to sale. *Id*.

On February 16, 2007, the same day the Teccas were refunded their final payment, Premier sold the property at foreclosure. CP 359-360, 454, 475. Although scheduled for 10:00 a.m., for some unknown reason bidding on the property did not begin until approximately 11:45 a.m. CP 367, 379-380. There were only two bidders at that time: Mr. Dickinson's partner, Mike McGee, and someone by the name of Jeff. CP 360. Before bidding, the individual crying the sale "pre-qualified" the bidders. CP 361-365, 373-375. This meant he asked the bidders to show him how much money they had before bidding began. *Id.* Mr. McGee had at least \$450,000.00 with him. CP 373. Jeff had only \$130,000.00. CP 371-372. The opening bid was \$114,792.08. CP 360; Appendix F. When the bidding reached \$130,000.00, Jeff was no longer permitted to bid, and the property was sold to Mr. Dickinson's partner. CP 369-372. Less than a

month later Ms. Albice and the Teccas commenced suit to set aside the foreclosure sale. CP 783-829.

B. Procedural History

Ms. Albice and the Teccas commenced suit against the Dickinsons to quiet title to the property; and against Option One and Premier for damages for breach of fiduciary duty, breach of the Forbearance Agreement, and improperly conducting the trustee's sale. CP 637-684, 721-776, 783-829. The Dickinsons filed claims against Ms. Albice and the Teccas to quiet title to the property, and for damages. CP 685-692. The Dickinsons also previously filed a complaint for unlawful detainer against Ms. Albice and the Teccas. CP 943-951. The unlawful detainer case was consolidated with the quiet title action. CP 777-778. The Dickinsons also filed cross claims against Option One and Premier for damages. CP 685-692.

On June 4, 2007, the claims of Ms. Albice and the Teccas against Premier and Option One were dismissed because of an arbitration agreement signed by the Teccas with Option One. CP 620-622. The order of dismissal did not affect the Dickinsons' claims against Option One or Premier. *Id.* Ms. Albice and the Teccas took Mr. Dickinson's deposition on May 1, 2007. CP 412. They also tried to obtain documents and take a CR 30(b)(6) deposition of Premier. CP 512, 570-575. Premier failed to

appear for the deposition, and on November 9, 2007, claimed they were no longer part of the litigation and asserted that they had departed the state of Washington. CP 578. Secretary of State and Department of Revenue records showed Premier was still doing business in Washington on that date. CP 600-601.

On December 7, 2007, Ms. Albice and the Teccas filed motions to compel production of documents and to compel the CR 30(b)(6) deposition of Premier. CP 553-608. On December 10, 2007, the Dickinsons filed a motion for partial summary judgment against Ms. Albice and the Teccas. CP 548-552. The next day the Dickinsons also filed a motion to voluntarily dismiss their own claims against Premier and Option One, asking that the motion be heard the same day as Ms. Albice and the Tecca's motion to compel. CP 520-524. The court eventually dismissed the Dickinsons' claims against Premier and Option One at the Dickinsons' request. CP 496-498. But the court also compelled Premier to send a representative to the CR 30(b)(6) deposition, compelled Premier to produce documents at that time, awarded terms against Premier, and continued the Dickinsons' summary judgment motion until discovery could be completed. CP 499-506, 620-622.

The deposition of the crier of the sale, Paul Morse, was taken on January 10, 2008. CP 346. The deposition of Lisa Clary, representative of Premier, was taken January 17, 2008. CP 239.

On March 6, 2008, Ms. Albice and the Teccas filed their own cross motion for summary judgment against the Dickinsons. CP 343-345. After oral argument, counsel for the Dickinsons submitted a written statement to Judge Foscue ex parte. CP 144, 157-160, 182. The statement was from an individual named Dale Sugimoto. Id. Although titled "Declaration," the statement was not made under oath or affirmation, and it was undated. CP 159-160. On May 11, 2008, based in part on Mr. Sugimoto's unsworn statement, Judge Foscue issued a letter ruling granting the Dickinsons' a partial summary judgment, and denying Ms. Albice and the Teccas' their motion for summary judgment. CP 17-20. Upon learning the Dickinsons had submitted Mr. Sugimoto's unsworn statement to the court ex parte, Ms. Albice and the Teccas asked Judge Foscue to reconsider his decision. CP 174-186. On June 2, 2008, Judge Foscue reversed his earlier decision in part, struck the statement of Dale Sugimoto, granted summary judgment to Ms. Albice and the Teccas, and quieted title in their favor. CP 143-146.

The Dickinsons then filed another motion for reconsideration asking Judge Foscue to consider a new declaration from Teresa Harding, arguing it was difficult to get a declaration from her at the time of the

summary judgment motion. CP 137-142. On June 26, 2008, Judge Foscue granted the second motion to reconsider, vacated his previous order, and ordered that the issue of Premier's authority to act as a trustee in Washington should proceed to trial. CP 100-102, 108-110.

The case was called for trial on March 24, 2009. RP 1. Following a one day trial the court concluded that Premier was authorized to conduct the foreclosure sale in this matter, quieted title in the Dickinsons, and awarded the Dickinson's a judgment for damages. CP 45-53. The court did not permit the litigation of any other issues at that time. RP 11. This appeal followed. CP 13-44.

III. SUMMARY OF ARGUMENT

The primary issue raised in this appeal is whether a non-judicial deed of trust foreclosure is void where the statutory requirements for such a sale were not complied with. There were at least three critical defects in the foreclosure sale in this case: (1) the sale was conducted more than 120 days after the date originally set in the Notice of Trustee's sale, (2) Ms. Albice and the Teccas tendered an amount more than sufficient to cure the default at least eleven days prior to the sale, and (3) the trustee was not qualified to conduct foreclosures in Washington State at the time of the sale because it had no resident officer at the time of the foreclosure.

The trial court determined, on summary judgment, that it did not matter whether the trustee complied with the non-judicial deed of trust foreclosure statute because the Dickinsons were bona fide purchasers for value at the foreclosure sale. In support of its decision, the trial court relied upon RCW 61.24.040(7), which provides:

...the [trustee's] deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of the chapter and the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

RCW 61.24.040(7) (Appendix A); CP 18.

For the reasons set forth in this brief, it is the position of Ms.

Albice and the Teccas that (1) the "recitation of facts" in the deed was inadequate to demonstrate compliance with the statute, (2) the critical "facts" recited in the deed were false on their face, and (3) the Dickinsons were not bona fide purchasers for value.

With regard to the "recitation of facts" contained in the deed, the statement that "all legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given," is a conclusory statement, not an actual statement of particular facts sufficient to overcome the deficiencies in the sale. CP 450 (paragraph 9); Appendix G. Second, the statement in the deed that, "the

Trustee, in its aforesaid 'Notice of Trustee's Sale,' fixed the place of sale... on 02/16/2007 at 10:00 a.m...." is simply false. *Compare* CP 444-447 (Appendix B) to CP 449-451 (Appendix G). The Dickinsons knew or should have known that this statement was false. Third, because the Dickinsons knew or should have known of the defects in the sale, and because the purchase price paid for the property was only 13% of the property's fair market value, the Dickinsons were not bona fide purchasers for value. Finally, the trial court erred in its rulings on the question of Premier's authority to act as a trustee by (1) reconsidering its grant of summary judgment to Ms. Albice and the Teccas, and (2) finding at trial that Teresa Harding was an officer of Premier at the time of the foreclosure sale.

For each of these reasons Ms. Albice and the Teccas ask that this court reverse the trial court and direct that judgment be entered in their favor, quiet title to the property in their names, and vacate the judgment (including the award of costs and statutory fees) entered in favor of the Dickinsons.

IV. ARGUMENT

A. THE DICKINSONS WERE NOT BONA FIDE
PURCHASERS FOR VALUE BECAUSE THEY KNEW OR
SHOULD HAVE KNOWN ABOUT THE DEFECTS IN THE
SALE AND THE PURCHASE PRICE OF THE PROPERTY

WAS SUBSTANTIALLY BELOW THE PROPERTY'S FAIR MARKET VALUE.

1. The Trustee's Deed did not contain a recitation of facts that the sale was conducted within 120 days of the date first set for sale, or that the trustee was qualified to act as a trustee in Washington.

The trial court erred in determining on summary judgment that the statements in the deed were conclusive as to compliance with the non-judicial deed of trust foreclosure statute because the Dickinsons were purportedly bona fide purchasers for value. CP 17-20; 24; 42-44; 45-47; 48-53 (Findings of Fact 1.2.3, 1.2.4, 1.2.8, 1.2.9; Conclusions of Law 2.5, 2.8, 2.9, 2.10, 2.11); 145; 183-186. Because this issue was decided on summary judgment, this court reviews the trial court's decision de novo. *Anderson v. Weslo, Inc.*, 79 Wn. App. 829, 906 P.2d 336 (1995). This court engages in the same inquiry as the trial court, reviewing the facts in the light most favorable to the non-moving party, in this case Ms. Albice and the Teccas. *Id.*

The rule that the recitals in trustee's deeds are conclusive as to compliance by the trustee with the statutory requirements of the foreclosure sale is only applicable *if* the sale was to a bona-fide purchaser for value. *Gliddon v. Municipal Authority of Tacoma*, 111 Wn.2d 341, 347, 758 P.2d 487 (1988). "A bona-fide purchaser for value is one who without notice of another's claim of right to, or equity in, the property

prior to his acquisition of title, has paid the vendor a valuable consideration." *Steward v. Good*, 51 Wn. App. 509, 512-513, 754 P.2d 150 (1988) citing *Glaser v. Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1960).

In the present case the Trustee's Deed did not contain any specific statements of fact that the sale was held within 120 days of the date originally set for sale or that the trustee was duly qualified to act as a trustee in Washington State. The closest the deed came to containing any statements on these issues is in paragraph 9 where the deed says, "all legal requirements and all provisions of said Deed of Trust have been complied with..." CP 450; Appendix G. Because the deed did not contain any statements of fact on these issues, there were no facts recited in the deed upon which the Dickinsons could rely, even if they are bona fide purchasers for value. RCW 61.24.040(7) (Appendix A). In any event, the Dickinsons were not bona fide purchasers for value for the reasons discussed below.

2. The Dickinsons were not bona fide purchasers for value because they were on notice of the defects in the sale and either ignored such defects or failed to inquire further about the defects.

Washington has adopted a two-prong test to analyze whether a party is a bona fide purchaser for value. *Gliddon v. Municipal Authority*

of Tacoma, 111 Wn.2d 341, 350, 758 P.2d 487 (1998). The Washington Supreme Court described that two-prong test as follows:

Two questions of fact must be answered to respond to OSB's contention. First, did the events surrounding Rourke's sale create in MACT a duty to inquire into possible flaws in the sale foreclosure process? Second, if MACT did have such a duty, did it satisfy that duty?

Id. at 350-351.

The first question under *Gliddon* is whether the events surrounding Premier's sale of the property created in the Dickinsons a duty to inquire into possible flaws in the foreclosure sale process. In the present case, Mr. Dickinson was intimately familiar with real estate investment and the nonjudicial foreclosure process. He testified in his deposition that he buys and sells houses for a living, that at that time he owned about thirteen (13) properties, eleven (11) of which he purchased at foreclosure sales, eight (8) of which were at non-judicial foreclosure sales. CP 428. He further testified that in his experience, if a sale is continued, it is usually continued for thirty days. CP 423:7-16. The sale in this case was continued for 161 days. Compare CP 444-447 (Appendix B) to CP 449-451 (Appendix G). Mr. Dickinson also testified that when the property first came to his attention, prior to the sale, he actually went to the property and later spoke with Karen Tecca at her residence. CP 421, 428-429, 528. He testified that when he asked Karen Tecca about selling the

property, and about the upcoming foreclosure sale, she stated she was not interested in selling, that the foreclosure sale was not going to happen, and that the Teccas were going to "make up the payments." *Id.* He then testified that based on his conversation with the Teccas, he was "surprised it [the property] came up for sale." CP 421:15.5-16.5.

The events surrounding this sale, together with Dickinson's nonjudicial foreclosure sale experience, created in Dickinson a duty to inquire into possible flaws in the sale process. In the present case, the Teccas had no notice that the sale was continued, or that it was continued to any specific date. In fact, the Teccas tendered all payments under their forbearance agreement and had tendered amounts sufficient to cure the delinquency more than 11 days before the sale. CP 268-270, 298-299. Until February 2007, Ms. Albice and the Teccas had no idea that despite curing the delinquencies and tendering all payments under the forbearance agreement, Premier continued to proceed with the sale. Further, neither Option One nor Premier informed Ms. Albice or the Teccas that the sale of their Property was scheduled for February 16, 2007. At the same time, Ms. Tecca informed Mr. Dickinson that she was paying off the debt, creating in Mr. Dickinson a duty to inquire into the possible flaws in the sale process. Accordingly, Dickinson had constructive knowledge of

those defects in the sale process that he would have otherwise discovered upon inquiry. In *Steward v. Good* the Court held,

It is a well-settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinarily prudent man upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question, the purchaser will be held chargeable with knowledge thereof and will not be heard to say that he did not actually know of them.

Steward v. Good, 51 Wn. App. 509, 513, 754 P.2d 150 (1988).

Clarifying the foregoing, the Court stated, "In other words, knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed." *Id.* Therefore, Mr. Dickinson is charged with notice that the Teccas had a claim, if not a right to or equity in, the Property prior to the sale. Thus, the Dickinsons cannot be a bona fide purchasers for value.

The second question under *Glidden* is whether the Dickinsons satisfied their duty of inquiry. In *Hudesman v. Foley*, the Supreme Court of Washington addressed this question, stating,

[q]uestions of fact as to which there is a conflict in the evidence, or the evidence is such that different inferences might reasonably be drawn therefrom are ordinarily for the jury under proper instructions. Thus, the questions of whether one was an innocent purchaser, bona fides, adequacy of consideration, possession, notice, whether the purchaser was put on inquiry, and whether inquiry would have resulted in notice are ordinarily for the jury.

Hudesman v. Foley, 73 Wn.2d 880, 889-890, 441 P.2d 532 (1968). In Gliddon, the Washington Supreme Court confirmed Hudesman's analysis when it stated,

The question of whether MACT [buyer] satisfied its duty of inquiry cannot properly be answered on summary judgment, however, because on this question, 'the evidence is such that different inferences might reasonably be drawn therefrom.'

Gliddon v. Municipal Authority of Tacoma, 111 Wn.2d at 351. In the present case, the sale was flawed by the mere fact that it was continued for more than 120 days after the original sale date. RCW 61.24.040(6) provides,

The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days . . .

RCW 61.24.040(6) (emphasis added) (Appendix A). The sale in this case was not "possibly" flawed, it *was in fact* flawed, and void. The Dickinsons would have known this by doing simple arithmetic. Mr. Dickinson testified by declaration that he learned about this sale when he was at another sale for a different property. CP 526. In his deposition Mr. Dickinson testified that he learned about this sale from reading the Mason County Journal, whereupon he went out and looked at the property. CP 419. In any case, had Dickinson performed the slightest reasonably

prudent inquiry, he would have learned that the Teccas had entered into a forbearance agreement, and had made all payments thereunder. After all, Dickinson had already been to the Teccas' residence where Karen Tecca told him that the foreclosure was not going to happen, and that they were going to "make up the payments." CP 421, 528. Simply asking Ms. Tecca why she thought the sale was not going to occur would have likely lead to the discovery that the Teccas were making payments under a forbearance agreement. Mr. Dickinson even testified that he was "surprised" that the sale occurred. CP 421.

According to his testimony, Mr. Dickinson either knew or should have known that the foreclosure sale took place more than 120 days after the date originally set for sale. According to Mr. Dickinson, when he first learned about the pending foreclosure he obtained his own copy of the Notice of Trustee's Sale. CP 526 (Appendix B). This document states on its face that the original date scheduled for the foreclosure sale was September 8, 2006. CP 444. Mr. Dickinson is familiar with the foreclosure laws in the state of Washington. CP 428. Given his possession of the Notice of Trustee's Sale, his knowledge of Washington foreclosure laws, and his extensive experience purchasing foreclosure properties, there is no reason he should not have known that the foreclosure sale on February 16, 2007, was more than 120 days after the

original sale date. CP 51 (Finding of Fact 1.2.5); CP 428. Any claimed reliance by Mr. Dickinson on the trustee's deed was not justified. That is because the deed itself erroneously states the original date set for sale was February 16, 2007. Ex. 16; CP 450; Appendix G. Mr. Dickinson testified that he knew the sale had been continued. CP 526 (paragraph 4). Therefore he knew that contrary to the trustee's deed, February 16, 2007, was not the originally scheduled sale date. Mr. Dickinson cannot claim that he relied upon the erroneous recitals contained in the deed when he both knew those recitals to be false, and had evidence in his possession (the Notice of Trustee's Sale) showing those recitals to be false.

3. The Dickinsons were not bona fide purchasers for value because the purchase price of the property was only 13% of the fair market value of the property.

In *Kinny v. McCall*, the Washington Supreme Court held that, "a person who purchases property for a nominal or grossly inadequate consideration is not a bona fide purchaser." *Kinney v. McCall*, 57 Wn. 545, 548, 107 P. 385 (1910). In one of the most well-known cases in this state on the subject, the court in *Cox v. Helenius* found a sale void where, "the grantor's home, with an equity of at least \$100,000 existing in the grantor, was sold for \$11,784." *Cox v. Helenius*, 103 Wn.2d 383, 385, 693 P.2d 683 (1985). The property in the present case had a fair market

value at the time of sale of \$950,000.00. CP 386-410. The Dickinsons paid \$130,000.00 for the property, which is thirteen percent (13%) of, and \$820,000.00 under, the property's fair market value.

To give a standard upon which a purchase price becomes "grossly inadequate," the Restatement (Third) of Property says, "Generally, . . . [a] court is warranted in invalidating a sale where the price is less than 20 percent of fair market value . . ." Restatement (Third) of Property §8.3 (1997), Comment b. The comment continues:

While the trial court's judgment in matters of price adequacy are entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.

Id.

In the present case, thirteen percent is well under the twenty percent threshold provided by the Restatement. In this case, it is important to translate thirteen percent into actual dollars. The Dickinsons paid eight hundred thousand dollars (\$800,000.00) *less* than the property's appraised value. Clearly the Dickinsons purchased the property for grossly inadequate consideration, and they cannot be bona-fide purchasers *for value*. Further, the Dickinsons knew that the price they paid for the property was grossly inadequate. Their partner/agent showed up at the foreclosure sale with at least \$450,000.00 in hand. CP 373.

"Grossly inadequate purchase price, together with circumstances indicating some additional unfairness may provide sufficient equitable grounds to set aside a non judicial foreclosure sale under the deed of trust act." *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 914, 154 P.3d 882 (2007). "... [W]hen there is a great inadequacy, slight circumstances indicating unfairness will be sufficient to justify a decree setting the sale aside." *Roger v. Whitham*, 56 Wn. 190, 193, 105 P. 628 (1909); citing *Ballentyne v. Smith*, 205 U.S. 285, 27 S.Ct. 527, 51 L. Ed. 803 (1907).

In the present case there were circumstances surrounding the sale that likely resulted in the bidding for the property being chilled, which is further evidence of unfairness. The most significant circumstance that chilled the bidding was the 161 day continuance of the sale, which was 41 days beyond the statutory limit. RCW 61.24.040(6). There were four or five bidders at the initial September 8, 2006, sale, and only two bidders at the sale 161 days later. CP 360, 423. The crier of the sale, Paul Morse, even commented on the lack of bidders and the low purchase price, stating that the sale was continued so many times that nobody thought the sale was going to happen. CP 369:8-9. Further, the crier of the sale ceased the bidding process and awarded the Property to the Dickinsons after they bid \$130,000.00, without allowing the other bidder to tender a higher bid. CP 369-372. In his deposition, Paul Morse testified that before he conducts

trustee's sales he "qualifies" bidders by making them show him their money. CP 361-365, 373-375. When the Dickinsons bid \$130,000.00, Mr. Morse looked to the other bidder and said "you're done," without allowing the other bidder to tender a higher bid, even if the other bidder could have pulled cash from his wallet. CP 369-372. Finally, for some unknown reason, Premier delayed the sale until 11:45 a.m., an hour and forty-five minutes after the time set for the sale. CP 367, 379-380. Delaying the sale nearly another two hours (after the 161 day delay) potentially resulted in other interested bidders departing. These circumstances, together with the substantially inadequate sales price established sufficient grounds for the court to set aside the foreclosure sale, and certainly should have precluded summary judgment in favor of the Dickinsons.

B. THE TRUSTEE HAD NO AUTHORITY TO CONDUCT A NON-JUDICIAL DEED OF TRUST FORECLOSURE MORE THAN 120 DAYS AFTER THE ORIGINAL DATE SET FOR SALE.

This issue was also decided by the court on summary judgment.

CP 143-146; 183-186. Therefore the standard of review is de novo.

Anderson v. Weslo, Inc., 79 Wn. App. 829, 906 P.2d 336 (1995). This court engages in the same inquiry as the trial court, reviewing the facts in

the light most favorable to the non-moving party, in this case Ms. Albice and the Teccas. *Id.*

The Washington Deed of Trust Act governing the procedure for conducting non-judicial foreclosure sales unequivocally sets forth a 120 day limit on the total amount of days that a sale may be continued.

The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods *not* exceeding a total of one hundred twenty days . . .

RCW 61.24.040(6) (emphasis added); Appendix A. This statute is clear on its face: a trustee's sale may not be continued beyond 120 days. "A court's objective in construing a statute is to determine the legislature's intent." *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). "When the statute's words are plain and unambiguous, we apply the statute as written." *Amresco Independence Funding, Inc. v. SPS Properties, LLC*, 129 Wn. App. 532, 536, 119 P.3d 884 (2005). "No part [of a statute] should be deemed inoperative or superfluous unless the result of obvious mistake or error." *Cox v. Helenius*, 103 Wn.2d 383, 388, 693 P.2d 683 (1985) *quoting* 2A C. Sands, *Statutory Construction* § 46.06, at 63 (4th ed. 1973).

Because RCW 61.24.040 unequivocally places a 120 day limit on continuing trustee's sales, this Court should give effect to this plain meaning as an expression of legislative intent. If trustees can continue sales for more than 120 days, then the statute is essentially inoperative and superfluous.

In the present case it is undisputed that Premier continued the trustee's sale from September 8, 2006, until February 16, 2007, which was a one hundred sixty-one day (161) continuation period. This was in direct violation of Washington law. This statute is so unambiguous that no published Washington cases could be found that directly interpret the 120 day rule. However, in *Felton v. Citizens Federal Savings and Loan Association of Seattle* and *Bingham v. Lechner* Washington courts acknowledged and reinforced the legislative intent in prohibiting continuances beyond 120 days.

In Felton v. Citizens Federal Savings and Loan Association of Seattle, 101 Wn.2d 416, 679 P.2d 928 (1984), the appellants sought to void a trustee's sale of their homestead, arguing that the trustee's sale was conducted improperly because it was delayed beyond a 30-day period allowed in the deed of trust. After finding that the appellant's were estopped on their claim relating to the 30-day delay period permitted in the Deed of Trust, the Washington Supreme Court, on its own initiative,

looked to the 120 statutory period to be sure the sale was valid: "The delay is within the 120 days allowed by RCW 61.24.040(6), as the statute was amended in 1981.... Thus, the delay in the sale was not prohibited by statute." Felton v. Citizens Federal Savings and Loan Association of Seattle, 101 Wn.2d 416, 424-425, 679 P.2d 928 (1984).

In *Bingham v. Lechner*, 111 Wn. App. 118, 45 P.3d 562 (2002), the Court analyzed the extent to which a trustee's foreclosure proceeding tolls the statute of limitations on a note. The Court ruled that the foreclosure proceeding tolls the statute of limitations until either the initial sale date or the last possible date that a sale could lawfully be held, which is 120 days after the initial sale date. The court stated,

Pursuant to RCW 61.24.040(6), he was entitled to continue the sale, originally scheduled for December 17, 1993, for 120 days. His failure to do that restarted the statute of limitations either on December 18, 1993, the date scheduled for the foreclosure, or 120 thereafter, which was April 17, 1994.

Bingham v. Lechner, 111 Wn. App. 118, 131, 45 P.3d 562 (2002).

Premier continued the sale in this case for a period of 161 days. The law is clear: the sale can be continued for a period *not exceeding 120 days*. RCW 61.24.040(6). The sale was unlawful and should have been declared void. RCW 61.24.040(6); *see also Homeowners Solutions, LLC v. Nguyen*, 148 Wn. App. 545, 200 P.3d 743 (2009) (tax foreclosure that

did not comply with statutory requirements renders the foreclosure and subsequent deed void). If the trustee had properly restarted the foreclosure process with an Amended Notice of Trustee's Sale provided to Ms. Albice and the Teccas, the sale never would have taken place because Ms. Albice and the Teccas would have tendered funds necessary to cure the default, just as they had done on February 2, 2007. CP 454, 474; RP 16.

C. THE TRUSTEE'S SALE SHOULD HAVE BEEN DISCONTINUED BECAUSE MS. ALBICE AND THE TECCAS TENDERED AN AMOUNT SUFFICIENT TO COMPLETELY CURE THE DEFAULT MORE THAN ELEVEN (11) DAYS PRIOR TO THE FORECLOSURE SALE.

Because the Teccas tendered funds sufficient to cure the default and had funds on deposit sufficient to cure the default more than eleven days before the foreclosure sale, the sale should have been discontinued. RCW 61.24.090(3). RCW 61.24.090 provides:

... in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower... shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice....

RCW 61.24.090(1). Further, "upon receipt of such payment the proceedings *shall* be discontinued, the deed of trust *shall* be reinstated and the obligation *shall* remain as though no acceleration had taken place."

RCW 61.24.090(3) (emphasis added). Discontinuing the sale is not

optional, it is mandated by the statute upon tendering an amount sufficient to cure the default. *Id*.

In discussing the duties of a foreclosing trustee, the Washington Supreme Court has stated:

Nonetheless, the trustee must "take reasonable and appropriate steps to avoid sacrifice of the debtor's property and his interest." *McHugh*, 583 P.2d at 214.

Furthermore, after a trustee undertakes a course of conduct reasonably calculated to instill a sense of reliance thereon by grantor, that course of conduct may not be abandoned without notice to the grantor. *Lupertino v. Carbahal*, 35 Cal.App.3d 742, 111 Cal.Rptr. 112, 116 (1973).

Cox v. Helenius, 103 Wn.2d at 389-390³.

At trial, Ms. Albice and the Teccas attempted to submit evidence of prejudice caused to them in the foreclosure process: to wit, a foreclosure that was conducted after they tendered payment in full. Exs. 17 to 32.

The trial court did not admit the exhibits and limited the scope of the trial, concluding that all issues had been resolved on summary judgment except the issue of whether Premier maintained an officer in the state at the time of the foreclosure. RP 11:20.5-25.5. The issue of Ms. Albice and the Teccas tendering payment in full more than eleven days prior to the sale was raised in the initial pleadings and on summary judgment. CP 334-

³ The language cited here regarding "notice to the grantor" appears to now be incorporated into the most recent amendment to the statute limiting continuances beyond 120 days. RCW 61.24.040.

336, 340-341 (summary judgment); CP 641 (paragraph 2.16), CP 642 (paragraphs 2.18, 2.25), CP 644 (paragraph 4.3) (Second Amended Complaint). Although not specifically addressed in the order on summary judgment, the trial judge appears to have determined that the matter was decided in favor of the Dickinsons on summary judgment. *Id.*; RP 11:20.5-25.5.

By entering into a forbearance agreement, the Teccas were led to believe that they could rely on that agreement without further foreclosure action being taken – at least without further notice to them. Specifically, the forbearance agreement stated, "Borrowers shall be considered in material breach of this Agreement...upon ten (10) days prior written notice to Borrowers...." CP 468. No such notice was provided to Ms. Albice or the Teccas prior to them tendering the full cure amount. CP 454, 474; RP 15-16. Neither were Ms. Albice or the Teccas notified that the foreclosure sale was continued six times. *Id.*; CP 352-359, 368.

On February 2, 2007, Ms. Tecca tendered the final payment under the forbearance agreement in the amount of \$1,220.14. CP 454, 474. This was fourteen days prior to the actual sale date. In addition to the \$1,220.14 tendered by Ms. Tecca, the lender/trustee was holding \$5,339.78 in unapplied funds on behalf of Ms. Albice and the Teccas. CP 268-270, 298-299; Appendix F. According to Premier's designated

representative, the amount necessary to cure at that point in time was only \$1,220.14. See CP 259. Had the final payment been accepted by Premier, Ms. Albice and the Teccas would have overpaid \$6,559.92. The Premier representative testified that even though the final payment had been tendered, the trustee rejected the payment and conducted the sale because the payment was late, not because there were insufficient funds to cure.

Id. This decision was based upon the terms of the forbearance agreement with apparent disregard for RCW 61.24.090. CP 262-264. Once Ms.

Tecca tendered an amount sufficient to cure the default on February 2, 2007, the trustee had an unconditional obligation to discontinue the sale.

RCW 61.24.090(3). The trustee's failure to discontinue the sale under these circumstances made the sale void. RCW 61.24.090(3); Cox v.

Helenius, 103 Wn.2d 383, 693 P.2d 683 (1985); Homeowners Solutions,

LLC v. Nguyen, 148 Wn. App. 545, 200 P.3d 743 (2009).

D. THE FORECLOSURE SALE WAS VOID BECAUSE PREMIERE DID NOT HAVE A CORPORATE OFFICER RESIDING IN WASHINGTON AT THE TIME OF THE FORECLOSURE AND THEREFORE IT WAS NOT LEGALLY QUALIFIED TO CONDUCT A NON-JUDICIAL DEED OF TRUST FORECLOSURE SALE.

A foreclosing trustee is a creature of statute. The Washington Supreme Court in *Udall* held that a trustee cannot deliver the trustee's deed to the purchaser if there are procedural irregularities that would void

the sale: "RCW 61.24.050 mandates that a trustee deliver the deed of trust to the purchaser following a nonjudicial foreclosure sale, absent a procedural irregularity that voids the sale." *Udall*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). Accordingly, when the sale is void, the trustee has no authority to sell the property. "The trustee cannot withhold delivery unless the sale itself was void due to a procedural irregularity *that defeated the trustee's authority to sell the property.*" *Udall*, 159 Wn.2d at 911 (emphasis added).

RCW 61.24.101(1)(a) governs the necessary qualifications to become a trustee under the Deed of Trust Act. "The trustee of a deed of trust under this chapter shall be: (a) any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident." RCW 61.24.101(1)(a). Premier was a domestic corporation, but it failed to maintain an officer as a Washington resident at the time of the foreclosure in this case.

...[B]ecause power-of-sale foreclosures are undertaken without judicial scrutiny, both deed of trust statutes and deeds of trust should be construed in favor of borrowers: A mortgage generally may be foreclosed only by filing a civil action while, under a Deed of Trust, the trustee holds a power of sale permitting him to sell the property out of court with no necessity of judicial action. The Deed of Trust statutes thus strip borrowers of many of the protections available under a mortgage. Therefore, lenders must strictly comply with the Deed of Trust statutes, and

the statutes and Deeds of Trust must be strictly construed in favor of the borrower.

Koegel v. Prudential Mut. Sav. Bank, 51 Wn. App. 108, 111, 752 P.2d 385 (1988) citing Patton v. First Fed. Sav. & Loan Ass'n, 118 Ariz. 473, 477, 578 P.2d 152 (1978).

If the trustee in this case were a disbarred attorney, an attorney not licensed to practice law in Washington, a title insurance company not authorized to do business by the Office of the Washington Insurance Commissioner, a foreign government or a foreign bank, there would be no question the court should invalidate the sale. Similarly, without maintaining a Washington resident as an officer, Premier is simply not a trustee for purposes of the Washington Deed of Trust Act. Accordingly, Premier had no lawful authority or power to sell the property or convey title by trustee's deed to the Dickinsons.

By analogy, a deed signed by a trustee without authority is no different than a forged deed. Under Washington law, a deed containing the forged signature of the grantor is utterly void, even against a bona fide purchaser for value.

It is unquestionably the general rule that one holding under a forged instrument, however ignorant he may be of the forgery or how much of value he may have parted with in reliance on the genuineness of the instrument, cannot claim protection against the title of the rightful owner on the ground that he is an innocent purchaser in good faith and for value. As some of the courts have said, it would be a monstrous doctrine to hold that one by forging a deed from his neighbor to himself could in any way affect the title of his neighbor.

Lewis v. Kujawa, 158 Wn. 607, 617, 291 P. 1105, 1108-1109 (1930); see also, Fidelity & Deposit Company of Maryland v. Ticor Title Insurance Company, 88 Wn. App 64, 943 P.2d 710 (1997), citing and quoting from Lewis at page 69; see also Homeowners Solutions, LLC v. Nguyen, 148 Wn. App. 545, 200 P.3d 743 (2009) (tax foreclosure that did not comply with statutory requirements renders the foreclosure and subsequent deed void). For the reasons discussed below, there was no evidence that Premier was qualified to act as a trustee at the time of the foreclosure sale in this case.

1. Ms. Albice and the Teccas should have been granted summary judgment, and the Dickinson's motion for reconsideration should have been denied, because a tactical decision or clerical error by defense counsel in not submitting a declaration until after summary judgment was granted to the other side does not constitute "newly discovered evidence."

Ms. Albice and the Teccas initially prevailed on this issue at summary judgment. CP 143-146. Title to the property was quieted in Ms. Albice and the Teccas by the court's order entered June 2, 2008. Id. The court's order granting summary judgment to Ms. Albice and the Teccas on June 2, 2008, should not have been set aside because there was no issue of

material fact at the time the motion was decided that Premier was not authorized to act as a trustee, and the Dickinsons did not demonstrate a valid basis for reconsidering the order. In the present case, there were two post summary judgment motions for reconsideration filed: (1) Ms. Albice and the Tecca's motion for reconsideration filed May 20, 2008, when it was discovered the court made its decision based upon inadmissible evidence submitted by the Dickinsons ex parte, and (2) the Dickinsons' motion filed June 12, 2008. CP 174-185; CP 137-142. CR 59(j) provides:

Limit on Motions. If a motion for reconsideration, or for a new trial, or for a judgment as a matter of law, is made and heard before the entry of the judgment, no further motion may be made without leave of the court first obtained for good cause shown: (1) for a new trial, (2) pursuant to sections (g), (h), and (i) of this rule, or (3) under rule 52(b).

In the present case, it was error for the court to consider and grant the Dickinsons' motion for reconsideration. Because the Dickinsons' motion for reconsideration was the second motion for reconsideration, the Dickinsons were required to obtain leave of court for such motion upon demonstrating good cause. CR 59(j). They did not do this. CP 137-142. Further, the Dickinsons' motion for reconsideration was filed *after* entry of judgment (unlike Ms. Albice and the Teccas' motion). For these two

reasons the Dickinsons' motion should have been heard only after obtaining leave of court and a showing of good cause. CR 59(j).

Regardless of the procedural irregularity in bringing their motion for reconsideration, the Dickinsons' motion should have been denied on the merits. In support of their motion for reconsideration, the Dickinsons argued the court should consider the declaration of Teresa Harding. CP 137-142. This declaration was not submitted at the time of the summary judgment motion. The Dickinsons argued Ms. Harding's declaration constituted new evidence because it, "was rather difficult to obtain as PMSWI ceased doing business in the State of Washington on or about August 1, 2007...." CP 139:17-18. However, there is a difference between evidence being difficult to obtain, and evidence being unavailable. *Davenport v. Taylor*, 50 Wn.2d 370, 311 P.2d 990 (1957); *Adams v. Western Host, Inc.*, 55 Wn.App. 601, 779 P.2d 281 (1989). Evidence being difficult to obtain does not constitute newly discovered evidence under the meaning of the court rule. *Id.*

Prior to their motion for reconsideration, the Dickinsons obtained an unsworn statement from an employee of Option One, Dale Sugimoto.

CP 143-146⁴. In that unsworn statement Mr. Sugimoto identified Ms.

Harding as the supposed resident agent of Premier at the time of the

⁴ The statement of Dale Sugimoto was never filed with the court by the Dickinsons, but can be found at CP 159-160.

foreclosure sale. CP 185. For some unexplained reason the Dickinsons had time to obtain the statement of Mr. Sugimoto, who was in California, prior to the summary judgment decision, but were not able to obtain the statement of Ms. Harding who was located in Kirkland, Washington. *See* CP 130-136, 159-160. As the Dickinsons acknowledge in their motion for reconsideration, the failure to obtain Ms. Harding's declaration was, "a clerical error made by counsel for either DICKINSON and/or PMSWI...." CP 139.

Washington case law is clear that a new declaration submitted to cure evidentiary errors in a former declaration does not constitute "newly discovered evidence" or evidence that could not have been discovered without the exercise of reasonable diligence. *Davenport v. Taylor*, 50 Wn.2d 370, 311 P.2d 990 (1957); *Adams v. Western Host, Inc.*, 55 Wn. App. 601, 779 P.2d 281 (1989) (party's failure to include necessary information in expert's declaration at summary judgment did not justify submitting a second declaration after the fact as "newly discovered evidence"); *Richter v. Trimberger*, 50 Wn. App. 780, 750 P.2d 1279 (1988) (court can't consider a second affidavit on a motion for reconsideration if it could have been obtained at the time of the earlier hearing).

The Dickinsons provided no evidence explaining why they could not have obtained a declaration from Ms. Harding instead of from Mr. Sugimoto prior to the summary judgment motion, or why they could not have submitted a proper declaration from Mr. Sugimoto. Clearly Ms. Harding was identifiable and could have been contacted. She was identified by Mr. Sugimoto in his own unsworn statement. CP 185. Rather than newly discovered evidence, the failure to obtain Ms. Harding's declaration was simply a, "clerical error made by counsel for either DICKINSON and/or PMSWI, who assisted in obtaining a declaration attempting to show a material fact existed." CP 139. Such a "mistake" falls squarely under the rule stated in Adams and should have resulted in denial of the Dickinsons' motion for reconsideration. Professional Marin v. Certain Underwriters, 118 Wn.App. 694, 77 P.3d 658 (2003); See also, Go2Net, Inc. v. C 1 Host, Inc., 115 Wn.App. 73, 60 P.3d 1245 (2003).

2. Ms. Albice and the Teccas should be granted judgment quieting title to the property because the uncontradicted evidence at trial was that Premier had no duly appointed or elected corporate officer residing in Washington at the time of the non-judicial deed of trust foreclosure in 2006 and 2007.

Even if the issue of Premier's lack of authority to act as a trustee was not appropriate for resolution on summary judgment, the testimony of

Ms. Harding at trial still failed to establish that Premier was qualified to act as trustee at the time of the foreclosure sale in this case. By her own testimony, Ms. Harding was not competent to testify on this issue because of her lack of personal knowledge, and there was no other evidence submitted at trial contradicting Premier's annual reports showing it had no elected or appointed resident officer in 2006 and 2007. ER 601, 602.

Premier's 2006 and 2007 Annual Report Statements, completed by Premier and filed with the Washington Secretary of State prior to this lawsuit pursuant to a statutory obligation identify no officer residing in the state of Washington. Ex 34 (Appendix D), 35 (Appendix E). RCW 23B.16.220 pertains to domestic corporations, and provides,

Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing initial and annual reports that set forth:(e) The names and addresses of its directors . . . the names and addresses of persons who will perform some or all of the duties of the board of directors; (g) the names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.

RCW 23B.16.220.

The statute goes on to provide that information in an initial report or annual report must be current as of the date the report is executed on behalf of the corporation. *Id.* at subsection (2). Subsection (3) provides,

"... [s]ubsequent annual reports must be delivered to the Secretary of State on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects." *Id.* at subsection (3).

The Washington Administrative Code for the Secretary of State sets forth more detailed requirements:

(1) Any corporation filing under the Washington Business Corporations Act shall file its initial (annual) report on the form provided by the secretary of state or shall clearly and concisely provide the information topically sectioned exactly in the following manner:

. . .

(d) Section 4. A list of names and addresses of all corporate officers and directors; and

. . .

(2) All profit and nonprofit corporations shall file their annual reports on the form prescribed by the secretary of state or clearly and concisely topically sectioned exactly in the following manner:

. . .

(c) Section 3. A list of names and addresses of all corporate officers and directors; and

. . .

WAC 434-110-120.

Premier's Annual Reports for 2006 and 2007 set forth a clear list

of the company's directors and officers, all of whom reside in California. Ex. 34 (Appendix D), 35 (Appendix E). The Dickinsons attempted to contradict this evidence with the testimony of Teresa Harding, and Premier's internal company documents from 2005. The trial court's specific findings of fact were as follows:

- 1.1.1 Teresa Harding was employed by OPTION ONE MORTGAGE CORPORATION ("OPTION ONE") on or about May 1, 2004.
- 1.1.3 OPTION ONE was affiliated with PREMIER MORTGAGE SERVICES OF WASHINGTON, INC. ("PREMIER").
- 1.1.5 On May 2, 2005, the Board of Directors of PREMIER, via Consent in Lieu of Special Meeting, elected Teresa Harding as vice president of PREMIER with an effective date of July 1, 2004 and ratified and confirmed all actions she had taken from and after July 1, 2004.
- 1.1.8 Effective May 31, 2005 Camperi and Troester, in a Consent in Lieu of that Annual Meeting of Directors of Premier, elected Teresa Harding as vice president of PREMIER, "...to hold such office at the pleasure of this Board of Directors."
- 1.1.10 Teresa Harding did maintain her residency in the State of Washington and served as vice president of PREMIER until August 2007.
- 1.1.11 PREMIER filed annual reports in connection with its applications for renewal of its Washington corporation license in 2006 and 2007 without identifying Teresa Harding as an officer of the corporation.

CP 49-50.

From these findings of fact the court entered the following conclusions of law:

- 2.1 Annual renewal reports filed by PREMIER in 2006 and 2007 do not control the determination of whether or not Teresa Harding was an officer of PREMIER at the times relevant to the PREMIER Trustee's Sale of the Property to DICKINSON.
- 2.2 PREMIER'S internal corporate records control that determination.
- 2.3 Those records establish that Teresa Harding was an officer of PREMIER at all times relevant to its Trustee's Sale of the Property to DICKINSON.
- 2.4 PREMIER was qualified to act as Trustee at the time of the Trustee's Sale to DICKINSON pursuant to the Deed of Trust Act, Chapter 61.24 RCW.

The review of findings and conclusions entered following trial is a two part process. *Tegman v. Accident & Medical Investigatons, Inc.*, 107 Wn. App. 868, 30 P.3d 8 (2001). The standard of review is as follows:

We first determine whether the trial court's findings of fact were supported by substantial evidence in the record. Landmark Development, Inc. v. City of Roy, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). Substantial evidence is evidence which, viewed in the light most favorable to the party prevailing below, would persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). If the findings are adequately supported, we next decide whether those findings of fact support the trial court's conclusions of law. Landmark Development, 138 Wn.2d at 573, 980 P.2d 1234.

Tegman v. Accident & Medical Investigations, Inc., 107 Wn. App. 868,

874, 30 P.3d 8, 12 (2001). In the present case there is no evidence to support the court's findings that Ms. Harding was an officer of Premier in 2006 or 2007, and therefore the court's conclusions that Premier was qualified to act as a trustee at that time are not supported by the evidence.

Finding of Fact 1.1.5 states that Ms. Harding was elected or appointed vice president of Premier in 2005. *See also* Ex. 2⁵. According to the bylaws of Premier, officers hold office for a one year term and are elected at each annual board meeting. Ex. 8 (page 6; Article III, Section 2). According to its corporate records, two annual meetings were then held. Ex. 34, 35. Ms. Harding was not re-elected at either one of those annual meetings. Ex 34 (Appendix D), 35 (Appendix E); CP 50 (Finding of Fact 1.1.11). No other corporate records (internal or otherwise) were submitted by Premier in discovery, nor by the Dickinsons at trial, to contradict this evidence. When asked at trial whether she was an officer of Premier after 2005, Ms. Harding testified:

- Q. [Mr. Kiger:] Do you know how you got appointed or elected to the vice president position?
- A. [Ms. Harding:] No. I recall receiving a phone call from someone saying that this part of my duties, and understanding that Diane performed the role before I did.
- Q. And do you know if you were ever re-elected to the position?
- A. I don't know.

⁵ Interestingly, Exhibit 4, which was submitted to authenticate Ex. 2, shows that Ex. 2 was modified Thursday, October 6, 2005, at 3:49:16 PM, five months after Ms. Harding was allegedly elected or appointed.

- Q. Do you know if you were ever re-appointed to the position?
- A. I don't know.
- Q. Did anybody ever tell you?
- A. Nobody ever told me one way or another. I assumed that my duties went through the termination of my employment.
- Q. Ms. Harding, I'm going to hand you Exhibit No. 34 in this matter and tell you that that is an annual report of Premier Mortgage Services of Washington for the year 2006. Take a look at that. Isn't it true that your name does not appear anywhere on that annual report as an officer of that company?

MR. DITLEVSON: Object, Your Honor. The document speaks for itself.

THE COURT: Sustained.

RP 36-37. Ms. Harding also testified that as vice president of Premier she had nothing to do with foreclosures, even though that is all that Premier does. RP 34:12-18.5.

There is no evidence, much less substantial evidence, to support Finding of Fact 1.1.10. The only evidence at trial of who the officers of Premier were in 2006 and 2007 are Exhibits 34 and 35. By law, Premier was required to disclose all of its officers on these reports. RCW 23B.16.220; WAC 434-110-120. No other evidence was submitted at trial to contradict Premier's own annual reports showing that Ms. Harding was *not* an officer in 2006 and 2007. Therefore, Conclusions of Law 2.1, 2.2, 2.3, 2.4, 2.5, 2.8, 2.9, 2.10, and 2.11 are not supported by the evidence either. In fact, the only evidence submitted at trial on this issue directly

contradicts these conclusions of law. The trial court's Finding of Fact 1.1.10, and Conclusions of Law 2.1-2.5, 2.8-2.11 should be reversed because they are not supported by substantial evidence and are not supported by the findings of fact. Judgment should be entered quieting title in favor of Ms. Albice and the Teccas.

E. THE JUDGMENT FOR RENT, COSTS AND STATUTORY ATTORNEY FEES SHOULD BE REVERSED AND MS. ALBICE AND THE TECCAS SHOULD BE AWARDED COSTS AND STATUTORY ATTORNEY FEES AS THE PREVAILING PARTY.

If this court determines that the trustee's sale was void then the judgment entered for rent, costs, and statutory attorney fees should also be reversed. The judgment for rent was entered pursuant to RCW 59.12.170, which provides that if the finding of the court following trial is, "... in favor of the plaintiff and against the defendant...[the court] shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer...." RCW 59.12.170. See CP 84:11-14. Costs (including a statutory attorney fee) were awarded to the Dickinson as the prevailing party in this action. RCW 4.84.010; See CP 47:1-4; 54-55. If it is determined that the foreclosure sale was void, then the trial court should have entered judgment in favor of Ms. Albice and the Teccas. Therefore, the Dickinsons would not be entitled to damages under RCW 59.12.170, nor costs under RCW 4.84.010. That portion of the court's

order should be reversed, Ms. Albice and the Teccas should be designated the prevailing parties, and they should be entitled to an award of costs pursuant to RCW 4.84.010.

V. CONCLUSION

Ms. Albice and the Teccas ask that this court reverse the judgment entered against them, declare the trustee's sale in this matter void, and quiet title in their favor as against the Dickinsons. The foreclosure sale in this case was void because it was conducted more than 120 days after the date originally set for sale, Ms. Albice and the Teccas were not given any notices the sale had been set for February 16, 2007, they tendered funds sufficient to cure the defaults more than eleven days prior to the sale, and the trustee was not qualified to act in Washington because it had no corporate officer who resided in the state at the time of the foreclosure. The Dickinsons either knew or should have known of these defects, and they did not pay sufficient consideration relative to the property's fair market value to be considered bona fide purchasers for value. Therefore, the trial court decisions should be reversed, and Ms. Albice and the Teccas should be awarded costs in this matter as the prevailing party.

Respectfully submitted this <u>20</u> day of October, 2009.

BLADO KIGER, P.S.

DOUGLASA). KIGER, WSBA #2621

Attorneys for Christa L. Albice, Bart A. Tecca and Karen L. Tecca

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the day of October, 2009, she placed with ABC Legal Messengers, Inc. an original Brief of Appellants and Certificate of Service for filing with the Court of Appeals, Division II, and true and correct copies of the same for delivery to each of the following parties and their counsel of record:

Attorneys for Respondents, Ron Dickinson and Cheryl Dickinson:

Richard L. Ditlevson Ditlevson Rodgers Dixon, P.S. 324 West Bay Drive NW, Suite 201 Olympia, WA 98502

DATED this 21st day of October, 2009, at Tacoma, Washington.

BLADO KIGER, P.S.

Heather Medina, Paralegal

APPENDIX A

BLADO KIGER, P.S.

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Tacoma, WA 98405-1609
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▷ WEST'S REVISED CODE OF WASHINGTON ANNOTATED
TITLE 61. MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS
CHAPTER 61.24. DEEDS OF TRUST

→ 61.24.040. Foreclosure and sale--Notice of sale

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

- (1) At least ninety days before the sale, the trustee shall:
- (a) Record a notice in the form described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded:
- (b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:
- (i) The borrower and grantor;
- (ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;
- (iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale:
- (iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale;
- (v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and
- (vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;
- (c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;
- (d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;
- (e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property,

or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the.... day of, ..., at the hour of.... o'clock.... M. at [street address and location if inside a building] in the City of, State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of, State of Washington, to-wit:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated, ..., recorded, ..., under Auditor's File No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, the beneficial interest in which was assigned by, under an Assignment recorded under Auditor's File No [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

П

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$, together with interest as provided in the note or other instrument secured from the... day of, ..., and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the.... day of, ... The default(s) referred to in paragraph III must be cured by the.... day of, ... (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the.... day of, ..., (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the.... day of, ... (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

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VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:	ing
by both first class and certified mail on the day of,, proof of which is in the possession of the Trustee; and to Borrower and Grantor were personally served on the day of,, with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.	ice
VII.	
The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of costs and fees due at any time prior to the sale.	all
VIII.	
The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all the interest in the above-described property.	eir
IX.	
Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to the objections if they bring a lawsuit to restrain the sale pursuant to <u>RCW 61.24.130</u> . Failure to bring such a lawsuit may result a waiver of any proper grounds for invalidating the Trustee's sale.	
[Add Part X to this notice if applicable under RCW 61.24.040(9)]	
, Trustee)) Address)	
[Acknowledgment]	
(2) I 11/2 (. n 1 !

(2) In addition to providing the borrower and grantor the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,

Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the.... day of, ...

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the.... day of, ... [11 days before the sale date]. To date, these arrears and costs are as follows:

	Currently due to reinstate	Estimated amount that will be due to reinstate
	on	on
		(11 days before the date set for sale)
Delinquent payments from, 19, in the amount of \$/mo.:	\$	\$
Late charges in the total amount of:	\$	\$ Estimated Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses: (Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting of Notices	\$	\$
Postage/Copying expense	\$	\$
Publication	\$	\$
Telephone charges	\$	\$
Inspection fees	\$	\$
	\$	\$
• • • • • • • • • •	\$	\$
TOTALS	\$	\$

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description Necessary		_	to	Cure	and	Documentation

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the... day of, ... [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional

late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:, whose address is, telephone () AFTER THE.... DAY OF, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to <u>RCW 61.24.130</u> upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME:	
ADDRE	SS:
	ONE NUMBER

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

- (3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;
- (4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;
- (5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;
- (6) The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale or, alternatively, by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;
- (7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and

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West's RCWA 61.24.040

of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under RCW 61.24.040(1), if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

- (8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured.
- (9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties.

				• • • • • • • • • • •	
) Trustee	
)	
			• • • • • • • • • • • • • • •) Address	
			• • • • • • • • • • • • • • • • • • • •)) Phone	
) FIIOITE	
STATE OF WASHINGTON)				
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COUNTY OF)				
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			State Of Washin	ngcon, restaing a	C
				Amount that will reinstate	
			to reinstate	40 days	80 days
			reinstate	·····	·····
			[date]	[date]	[date]
Delinquent payments	from	the 1st	\$	\$	\$

day of \dots , 19 \dots , in the amount of:			
Late charge for every delinquent dollar owed in the amount of:	\$	\$	\$
Attorneys fees in the amount of:	\$	\$	\$
Trustee's expenses in the amount of [Itemization]	Ξ:	Estimated Cost	s Estimated Costs
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		Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses:		
(Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting of Notices	\$	\$
Postage/Copying expense	\$	\$
Publication	\$	\$
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Telephone charges	\$	\$
Inspection fees	\$	\$
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	\$	\$
TOTALS	\$	\$
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Default	Description Necessary	Action Required Show Cure	to	Cure	and	Documentation

Current through Chapter 2 of the 2007 Regular Session

© 2007 Thomson/West.

END OF DOCUMENT

APPENDIX B

BLADO KIGER, P.S.

ATTORNEYS AT LAW
Bank of America Building, 2nd Floor
3408 South 23rd Street
Tacoma, WA 98405-1609
Tel (253) 272-2997 Fax (253) 627-6252



And when recorded mall to:

Premier Mortgage Services Of Washington Inc. C/O Option One Mortgage Corporation 6501 Irvine Center Drive Irvine, CA 92818

"L91 TITLE, FNDS DIVISION"

Title Order No. 5510524 Q-151486

apace above this line for recorder's use TS #: 05-24191-WA

NOTICE OF TRUSTEE'S SALE

Pursunnt to the Revised Code of Westrington Chapter 81.24 of, ang.

NOTICE IS HEREBY GIVEN that the undersigned Trustee, Premier Mortgage Services of Weshington, SUCCESSOR TRUSTEE, will on 09/08/2006, at 10:00 s.m. at the main entrance to the Superior Courthouse 4th and Ader, Shelton, WA, will sell all public auction to the highest and best bidder, payable at the time of sale the following described real property, situated in the County of Meson, State of Washington, K-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART THEREOF.

And commonly known as:

ASLAND DR., SHELTON, WA 98584-8441

And commonly known as:

1222 S /SLAND DR., SHELTON, WA 98584-8441

22015-24-0020

Ptn. of Cov Lot. 8 Sec 15- Twi 20 IN Rop 2 W W.M.

which is subject to their certain Deed of Trust dated 05/05/2003, and filled for record 05/07/2003, as Instrument No.

1781194. of Official Records Mason County Washington, from CHRISTA L. ALBICE, FORMERLY CHRISTA L. DE YOUNG, A MARRIED WOMAN AS HER SEPARATE PROPERTY, AS TO AN UNDIVIDED 1/2 INTEREST AND BART A. TECCA AND KAREN. TECCA HUSBAND AND WIFE, AS TO AN UNDIVIDED 1/2 INTEREST, as Grantor(s), to First American Title-Insurance-Company, a California Corporation, as Trustee, to secure an obligation in favor of H&R BLOCK MORTGAGE CORPORATION, A MASSACHUSETTS CORPORATION, as Beneficiary, the beneficial interest in which was assigned by mesne assignments to Wells Fargo Bank, N.A., as Trustee for GSAMP Trust 2003-HE2 Mortgage Pass-Through Certificates, Series 2003-HE2.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

6 default (s) for which this foreclosure is made is/are as follows:

allure to pay when due the following amounts which are now in arrears:

Payments From 4/1/2006 to 06/02/08

Lefe Charges

Advances/Exponses

Grand Total:

\$2,422.77

\$96.92

,291.66

\$1,228.03

IV.

The sum owing on the obligation secured by the Deed of Trust is: The principal sum of \$112,369.36, together with interest as provided in the Note or other instrument secured from 03/01/2006, and such other costs and fees as are due under the Note or other instrument secured, and as are provided by statute.

V.

The above described real property will be sold to satisfy the expense of sele and the obligation secured by said Deed of Trust as provided by statute. Said sale will be made without warranty expressed or implied, regarding little, possession, encumbrances on 09/08/2008. The defaults referred to in Paragraph (III, must be cured by 08/28/2008, (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before 08/28/2008, (11 days before the sale) the default as set forth in Paragraph III is cured and the Trustee's fees and costs are paid. The sale may be terminated any time after 08/28/2008, (11 days before the sale date) and before the sale, by the Grantor, any Guerantor, or the holder of any recorded turior tien of encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

A written Notice of Default was transmitted by the Beneficiary or Tryslee to the Borrower and Grantor at the following addresses: 1222 E. S. ISLAND DR., SHELTON, WA 95594-8441

by both first class and certified mall on Tue May 24 00:00:00 EDT 2005, proof of which is in the possession of the Truslee; and the Borrower and Grantor were personally served on Tue May 24 00:00:00 EDT 2005, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Truslee has possession of proof of such service or posting.

> // v

The Trustee whose name and address are set forth below will provide in writing to enyone requesting it, a statement of all costs and fees due at any time prior to the spip.

VIII.

The effect of the sale will be le-deprive the Grantor end all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may rosult in a waiver of any proper grounds for invalidating the Trustee's sale.

X.

NOTICE TO OCCUPANTS OR TENANTS (If applicable under RCS 81.24,040(9))

The purchaser at the trustoo's solo is entitled to possession of the property on the 20th day following the anile, as against the granter under the deed of trust (the owner) and enyone having an interest jurior to the deed of trust, including organisation of the deed of trust, including organisation or the deed of trust, including organisation or the deed of trust, including organisation of the deed of trust, including organisation organisation organisation organisation or the deed of trust, including organisation o

Dated: 6/2/2006

Premier Mortgage Services of Washington, Inc., Successor Trustee

Its: Assistant Secretary

State of County of

California) ss. Orange)

On 6/2/2006, before me, J.D-Rivera, Notary Public, personally apprared Klm Thome, personally known to me (or proved to me on the basis of setisfactory evidence) to be the person(s)-whose name(s) is/are subscribed to the within inshumant and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(les), end that by his/inr/their airpnature(a) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the histrament.

WITNESS my hand and official seal

Commission # 1882319 olony Public - California Orange County My Comm. Expires F#6 13, 2009

For further information please contact:
Premier Mortgage Services of Washington Inc.
15500 S.E. 30th Place, \$102
Believue, WA 98007
(800) 530-8224
For Sale Information, please call 714-573-1985



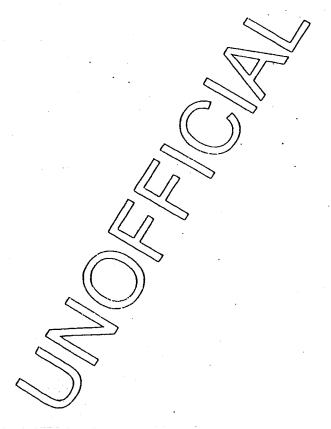
EXHIBIT "A"

DESCRIPTION:

Thei portion of Government Lot 8 and of a tract of second-class tidellands suitable for the cultivation of oysters, as convoyed by the State of Washington, to J. D./Jayne of deed recorded in Volume 9 of Oysterlands, page 47, under Auditor's File No. 21435, all in Section 15, Township 20 North, Range 2 West, W.M., in Mason County, Washington, particularly described as follows:

BEGINNING at the Northeast corner of said Government Lot 8; Inqued South 1°50'46" West along the East line thereof, 45 feel; thence South 51°07'29" West, 828 feet to the head of a coverlying on the Easterly side of Poole Passage; thence South 37°41'8" West, 870 feet, more or less, to the Westerly line of a trect of fand conveyed to J. D. Layre by deed recorded in Voltame 9 of Oystarlands, page 47, under Auditor's File No. 21435; thence Northwasterly along the Westerly line of said Layre tract to the Southerly line of a tract of land conveyed to Loying H. Moyers by deed, recorded August 20, 1932, under Auditor's File No. 69912; thence South 87°65'27 east stongsaid Southerly line, 148 feet, more or less, to the Westerly line of solid Government Lot 8; thence North 38°50'00" East, 280 feet, more or less, to the North line of Government Lot 8; thence South 87°65'29 East along said North line, 817 feat, more or less, to the POINT OF REGINNING.

EXCEPTING THEREFROM road right-of-way for South Island Drive.



APPENDIX C

BLADO KIGER, P.S.

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington, Chapter 61.24 RCW

T.S. No. 05-24191-WA

TSG Number: 5510524

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to Wells Fargo Bank, N.A., as Trustee for GSAMP Trust 2003-HE2 Mortgage Pass-Through Certificates, Series 2003-HE2, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on 09/08/2006.

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorney's fees as set forth below by 08/28/2006(11 days before the sale date). To date, these arrears and costs are as follows:

	Currently due to reinstate on: 6/2/2006	Estimated amount that will be due to reinstate on: 08/28/2006 (11 days before the date set for sale.)
Delinquent payments from 4/1/2006,	\$2,422.77	\$4,037.95
in the amount of 807.59	•	
Late charges in the total amount of:	\$96.92	\$242.30
Advances:	-\$1,291.66	-\$1,291.66
Trustee's Fee:	\$675.00	\$675.00
Trustee's Expenses: (Estimated Itemization)		
Title Report	\$676.87	\$676.87
Recording Fees	\$40.00	\$60.00
Service/Posting of Notices	\$100.00	\$100.00
Postage/Copying expense	\$30.00	\$50.00
Publication	\$750.00	\$750.00
TOTALS	\$3,499.90	\$5,300.46

As to the defaults, which do not involve payment of money to the beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults, which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

None

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the 08/28/2006 (11 days before the sale date), by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:

Premier Mortgage Services of Washington, Inc. 15500 S.E. 30th Place #102 Bellevue, WA 98007 (800) 530-6224

AFTER 08/28/2006, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance \$112,369.36 plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at

Premier Mortgage Services of Washington, Inc. 15500 S.E. 30th Place #102 Bellevue, WA 98007 (800) 530-6224

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold to satisfy the obligations secured by your Deed of Trust. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property.

Dated: 6/2/2006

Premier Mortgage Services of Washington, Inc., as Trustee

By: Jennifer Davis-Rivera, Assistant Secretary

APPENDIX D

BLADO KIGER, P.S.



Secretary of State

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

certificate that the attached is a true and correct copy of

ANNUAL REPORT

of

PREMIER MORTGAGE SERVICES OF WASHINGTON, INC.

as filed in this office on May 12, 2006.

Date: August 1, 2008

STATE ON A SHIP OF THE PROPERTY OF THE PROPERT

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Sam Reed, Secretary of State



Department of Licensing

Profit Corporation

Completed Annual Report 2



RETRIEVED ARCHIVE ON 8/1/2008 at 8:51 AM

Your annual report has been completed and submitted. Your renewal is not complete until payment is received from your credit card provider. Please allow 14 days to receive your license document in the mail. If you have any questions contact us at mls@dol.wa.gov.

Completed Date and Time:

May 12 2006 9:20AM (Pacific Time Zone)

Transaction Number:

2006 132 5050

(Refer to this number if you have questions about this application.)

Credit Card Approval Number:

11474508369043322364261

Business Entity Information:

PREMIER MORTGAGE SERVICES OF WASHINGTON, INC.

Profit Corporation

Your license will be mailed to the registered agent below.

C T CORPORATION SYSTEM

520 PIKE ST

SEATTLE, Washington 98101

Unified Business ID: State of Incorporation: Date of Incorporation:

Expiration Date:

601 876 858

Washington 05/18/1998 05/31/2007

Annual Report:

Principal place of business in Washington:

C/O CT Corporation System

520 Pike St.

Seattle, Washington 98101

Title(s)

Telephone Number:

(800) 925 7562

Nature of your business:

Services - All Other

Confirmed Governing People:

ROBERT DURBRISH	6501 Irvine Center Drive IRVINE, California 92618	President
JOANNE CORDERO	6501 Irvine Center Drive IRVINE, California 92618	Secretary, Director
JILL BRIGHT	6501 Irvine Center Drive IRVINE, California 92618	Treasurer
ROGER W RIZNER	6501 Irvine Center Drive IRVINE, California 92618	Chairman of the Board, Director
RONALD JANTZEN	6501 Irvine Center Drive	Director

IRVINE, California 92618

Address

Fee Statement:

Name

Domestic Profit Corporation Renewal Application Fee

Total Fees \$59.00

\$50.00 \$9.00

(\$0.00)

Previous Payment Total Amount Billed to Your MasterCard \$59.00

Person Completing:

Completed by:

Amy Ehnes (Agent Authorized to Complete)

Back

APPENDIX E

BLADO KIGER, P.S.

The State of Washington

Secretary of State

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

certificate that the attached is a true and correct copy of

ANNUAL REPORT

of

PREMIER MORTGAGE SERVICES OF WASHINGTON, INC.

as filed in this office on April 18, 2007.

Date: August 1, 2008

STATE OF A PASHED OF A PASHED

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

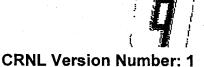
Sam Reed, Secretary of State



${\mathcal D}$ epartment of ${\mathcal L}$ icensing

Profit Corporation

Completed Annual Report 2



RETRIEVED ARCHIVE ON 8/1/2008 at 8:51 AM

Your annual report has been completed and submitted. Your renewal is not complete until payment is received from your credit card provider. Please allow 14 days to receive your license document in the mail. If you have any questions contact us at mis@dol.wa.gov.

Completed Date and Time:

Apr 18 2007 2:43PM (Pacific Time Zone)

Transaction Number:

2007 108 5323

(Refer to this number if you have questions about this application.)

Credit Card Approval Number:

1769325980003322364262

Business Entity Information:

PREMIER MORTGAGE SERVICES OF WASHINGTON, INC.

Profit Corporation

Your license will be mailed to the registered agent below.

C T CORPORATION SYSTEM

520 PIKE ST

SEATTLE, Washington 98101

Unified Business ID: State of Incorporation: Date of Incorporation:

Expiration Date:

601 876 858

Washington 05/18/1998 05/31/2008

Annual Report:

Principal place of business in Washington:

6501 Irvine Center Drive Irvine, California 92618

Title(s)

Chairman of the Board, Director

Telephone Number:

(877) 858 3855

Nature of your business:

Services - All Other

Does your company own land, buildings, or other real

property in Washington?

no

If Yes, has there been a change of 50% or more of the ownership of stock or other interest in the company during the last 12 months?

Address

Confirmed Governing People:

ROGER W RIZNER

Name

ROBERT DURBRISH	6501 IRVINE CENTER DRIVE IRVINE, California 92618	President
JOANNE CORDERO	6501 IRVINE CENTER DRIVE IRVINE, California 92618	Secretary, Director
JILL BRIGHT	6501 IRVINE CENTER DRIVE IRVINE, California 92618	Treasurer

6501 IRVINE CENTER DRIVE

IRVINE, California 92618

6501 IRVINE CENTER DRIVE

IRVINE, California 92618

Director

Fee Statement:

RONALD JANTZEN

Domestic Profit Corporation \$50.00 Renewal Application Fee \$9.00

> **Total Fees** \$59.00

Previous Payment (\$0.00)

Total Amount Billed to Your MasterCard \$59.00

Person Completing:

Completed by:

ROBERT DURBRISH (President)

Back

APPENDIX F

BLADO KIGER, P.S.

lc FORM=ABC PRINTER=PZ1Z SECURITY=

BID INSTRUCTIONS

February 15, 2007 Loan No. 0010995348

Mortgagor Name:

Bart A Tecca Karen L Tecca

Property Address:

1222 E S Island Dr Shelton WA 98584

Sale Date: 02-16-07

041C Date: 02 10 07		
Principal Balance:	\$.	111,800.39
Interest Due Through Sale Date:		4,679.54
Accrued Late Charge:		.00
Forecasted Late Charge:		.00
Bad Check Fees:		.00
Escrow/Impound Balance		807.59
Appraisal/Property Inspections		208.40
Bankruptcy/Foreclosure Fees		675.00
Bankruptcy/Foreclosure Costs		197.94
Credits:		
Credit toward Foreclosure/Bankrupto	cy fees	-3,623.17
Funds in Suspense		909.02
Total Due:	\$	112,221.49
Total Due:	\$	112,221.49
Liquidation Appraisal Value: \$ 675.	000.00	-

Bid the following Plus your outstanding fees and cost:

id Total Debt plus your outstanding fees and costs.

p ame of Contact: Camron Hashemi

none: (800) 326-1500

utate Code: 46

Investor Number: 697

BID INSTRUCTIONS

February 15, 2007

Loan No. 0010995348

Mortgagor Name:

Bart A Tecca

Karen L Tecca

Property Address:

1222 E S Island Dr

Shelton WA 98584

Sale Date: 02-16-07

Principal Balance:	111,800.39
Interest Due Through Sale Date:	4,679.54
Accrued Late Charge:	.00
Forecasted Late Charge:	.00
Bad Check Fees:	.00 Q
Escrow/Impound Balance	~807.59 ~ Y
Appraisal/Property Inspections	208.40
Bankruptcy/Foreclosure Fees	675.00
Bankruptcy/Foreclosure Costs	197.94
Credits:	
Credit toward Foreclosure/Bankruptcy fees	-3,623.17
Funds in Suspense	-000 02

Cotal Due: \$ 112,221.49

Liquidation Appraisal Value:

Bid total debt plus your outstanding fees and costs.

Name of Contact: Camron Hashemi Phone: (800) 326-1500

State Code: 46 Investor Number: 697

Title to be vested in the name of Wells Fargo Bank, N.A.

675.00 8718.53 3443.53 -872.94

2570*59* 112221 u 9

114.792.08

\$ 675,000.00

APPENDIX G

BLADO KIGER, P.S.

1890507 DEED
Receipt #5016
Mason County, NA
RON DICKINSON

Pages: 3

03/02/2007 03:26 PM Rec Fee: \$34.00

AFFIDAVIT No. SEE EXCISE TAX

MAR 02 2007

When recorded mail to: RON DICKINSON 855 Trosper Rd, Ste 108-311 Tumwater, WA 98512-8108 EXEMPT
LISA FRAZIER
Treas., Mason County

T.S. Number: 05-24191-WA Loan Number: 0010995348 SPACE ABOVE THIS LINE FOR RECORDER'S USE Investor Number: 697

TRUSTEE'S DEED

The GRANTOR, Premier Mortgage Services of Washington, inc., as present Trustee under that Deed of Trust, as hereinafter particularly described, in consideration of the premises and payment recited below, hereby grants and conveys, without warranty, to: RON DICKINSON

GRANTEE, that real property, situated in the County of Mason, State of Washington, described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART THEREOF.

Parcel Number: 22015-21-00020

Sec. 15 T20 RZ

RECITALS:

- 1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon said Trustee by that certain Deed of Trust between CHRISTA L ALBICE, FORMERLY CHRISTA L. DE YOUNG, A MARRIED WOMAN AS HER SEPARATE PROPERTY, AS TO AN UNDIVIDED 1/2 INTEREST AND BART A. TECCA AND KAREN L. TECCA, HUSBAND AND WIFE, AS TO AN UNDIVIDED 1/2 INTEREST as Trustor. In which H&R BLOCK MORTGAGE CORPORATION, A MASSACHUSETTS CORPORATION is named as Beneficiary and FIRST AMERICAN TITLE INSURANCE COMPANY, A CALIFORNIA CORPORATION as Trustee and recorded 05/07/2003 as instrument No. 1781194, of Official Records of Mason County, Washington
- Said Deed of Trust was executed to secure, together with other undertakings, the payment of one promissory
 note in the sum of \$115,500.00 with interest thereon, according to the terms thereof, in favor of H&R BLOCK
 MORTGAGE CORPORATION, A MASSACHUSETTS CORPORATION and to secure any other sums of
 money which might become due and payable under the terms of said Deed of Trust.
- The described Deed of Trust provides that the real property conveyed therein is not used principally for agricultural or farming purposes.
- 4. Default having occurred in the obligations secured and/or covenants of the Grantor, as set forth in Notice of Trustee's Sale described below, which by the terms of the Deed of Trust make operative the power to sell, the thirty-day advance Notice of Default was transmitted to the Grantor, or his successor in interest, and a copy of said Notice was posted or served in accordance with law.



- Wells Fargo Bank, N.A., as Trustee for GSAMP Trust 2003-HE2 Mortgage Pass-Through Certificates. Series 2003-HE2, being then the holder of the indebtedness secured by said Deed of Trust, delivered to said Trustee a written request directing said Trustee or his authorized agent to sell the described property in accordance with law and the terms of said Deed of Trust.
- The defaults specified in the "Notice of Default" not having been cured, the Trustee, in compliance with the terms of said Deed of Trust, executed and on 06/05/2005 recorded in the office of the Auditor of Mason County, Washington, a "Notice of Trustee's Sale" of sald property.
- The Trustee, in its aforesaid "Notice of Trustee's Sale," fixed the place of sale as at the main entrance to the Superior Courthouse 4th and Alder, Shelton, WA, a public place, on 02/16/2007 at 10:00 a.m., and in accordance with law caused copies of the statutory "Notice of Trustee's Sale" to be transmitted by mail to all persons entitled thereto and either posted or served prior to 90 days before the sale; further, the Trustee caused a copy of said "Notice of Trustee's Sale" to be published once between the thirty-second and twentyeighth day before the date of sale, and once between the eleventh and seventh day before the date of sale, and further, included this Notice, which was transmitted to or served upon the Grantor or his successor in interest, a "Notice of Foreclosure" in substantially the statutory form.
- During foreclosure no action was pending on an obligation secured by said Deed of Trust.
- All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Chapter 61.24 RCW.
- The defaults specified in the "Notice of Trustee's Sale" not having been cured eleven days prior to the date of Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on 02/16/2007, the date of sale, which was not less than 190 days from the date of default in the obligation secured, the Trustee then and there sold at public auction to said Grantee, the highest bidder therefore, the property hereinabove described, for the sum of \$130,000.00, by the satisfaction in full of the obligation then secured by said Deed of Trust, together with all fees, costs and expenses as provided by statute.

Date: 2/28/2007

Premier Mortgage Services of Washington, Inc.

By: Kim Thorne, Assistant Secretary

State of California) ss. County of Orange)

On 2/28/2007, before me, J.D-Rivera, Notary Public, personally appeared Kim Thorne personally known to me (or proved to me on the basis of satisfactory evidence) to the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(les), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument,

WITNESS my hand and official seal

SIGNATURE

J. D-RIVERA Commission # 1552319 Notary Public - California Orange County My Comm. Expires Feb 13, 2009

EXHIBIT "A"

That portion of Government Lot eight (B) and of a tract of second-class tidelands suitable for the cultivation of oysters, as conveyed by the State of Washington, to J.D. Layne by deed recorded in Volume 9 of Oyster Lands, page 47, Auditor's File No. 21435, all in Section fifteen (15), Township twenty (20) North, Range two (2) West, W.M., particularly described as follows:

BEGINNING at the Northeast corner of said Government Lot eight (8); thence South 1°59'45' West along the East line thereof, 45 feet; thence South 51°07'29' West, 528,28 feet to the head of a cove lying on the Easterly side of Peale Passage; thence South 37°41'31" Wast, 520 feet, more or less, to the Westerly line of a tract of land crively to J.D. Layne by deed recorded in Volume 9 of Oyster lands, page 47, Auditor's File No. 21435; thence Northwesterly along the Westerly line of said Layne tract to the Southerly line of a tract of land conveyed to Louise H. Meyers by deed recorded August 20, 1932, Auditor's File No. 58912; thence South 87°55'28' East along said Southerly line, 148 feet, more or less, to the Westerly line of said Government Lot eight (8); thence South 87°55'29' East along said North line, 817 feet, more or less, to the POINT OF BEGINNING; excepting therefrom road rights-of-way.

Parcel No. 22015 21 00020.

TOGETHER WITH and SUBJECT TO easomonis, residential reservations, convenients, conditions and appearance of record.